

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL REVISION APPLICATION NO. 119 OF 1998

Rajaram Dada Patil
Age 39 years, Occupation-
Agriculture, R/o Village
Chorochi, Tal. Kavathe
Mahankar, Dist. Sangli, ..Petitioner

Vs.

The State of Maharashtra ..Respondent

Mr. K.S. Patil for petitioner.
Dr. S.S. Tatkare, APP for respondent-State.

CORAM: B.H. MARLAPALLE, J.

Date : January 10, 2007.

ORAL

JUDGMENT:

1. The petitioner-accused was put on trial before the learned Sessions Judge at Sangli in Sessions Case No.58 of 1990 for the offences punishable under Sections 498-A and 306 of Indian Penal Code and by his Judgment and Order dated 30/3/1992 the learned II-Assistant Sessions Judge, Sangli was pleased to convict the petitioner for both the offences i.e. 498-A and 306 of IPC. For the first offence, the petitioner was awarded the sentence of RI for two years and for the second offence he was sentenced to undergo RI for five years. This order of conviction

and sentence came to be challenged in Criminal Appeal No.21 of 1992, which was partly allowed by the learned Sessions Judge at Sangli vide his Judgment and Order dated 4/5/1998. The order of conviction and sentence for the offence punishable under Section 306 of IPC was set aside and the accused was acquitted for that offence. However, the order of conviction of the accused for the offence under Section 498-A of IPC was confirmed but the order of sentence was modified by reducing the sentence to RI for one year. The petitioner-accused aggrieved by this order of conviction and sentence for offence punishable under Section 498-A of IPC.

2. The prosecution had examined in all 13 witnesses and P.W.1 and P.W.2 were the panch witnesses for the panchanama of the place where the deceased had committed suicide in her house and they had turned hostile so far as the panchanama at Exh.11 is concerned. P.W.3 was a formal witness, P.W.4 Bhanudas and P.W.5 his wife Mangal (brother and brother's wife of the deceased) did not support the prosecution case. Laxman Yamagar (P.W.6) was examined in support of the prosecution case that the accused had transferred his

land to the father of the deceased while borrowing an amount of Rs.20,000/- for acquiring the four wheeler commercial vehicle and as the said proposal did not accept by the father-in-law, the accused was insisting that his father-in-law ought to retransfer his agricultural land. Tukaram Savale (P.W.7) was examined in support of the prosecution case that the deceased was subjected to cruelty but the learned trial Judge discarded the testimony of this witness on the ground that it was a hear-say. Dr. Ajitsingh Chaddha (P.W.8) was the Medical Officer who had conducted the autopsy and admitted the post mortem report while in the witness box. Three police officers i.e. P.W.11 to P.W.13 were examined in support of the investigation. The prosecution case so far as the offence under Section 498-A of IPC is concerned, is based squarely on the evidence of two witnesses mainly Jafar Japtikhan (PW 9), the Special Executive Magistrate, who had recorded the dying declaration of deceased Shalan and Dr.Kshirsagar (P.W.10) who was the Medical Officer in attendance when Shalan was admitted in the hospital and was present when P.W.9 recorded the dying declaration on 2/2/1990. Both the courts below have held that dying

declaration at Exh.25 and as recorded by P.W.9 was duly proved. The conviction is thus based on the dying declaration at Exh.25 duly supported by the oral evidence of P.W.9 and P.W.10

3. A perusal of the dying declaration shows that on intimation received by the SEM from Miraj City Police Station, he reached the burn ward of Miraj Mission Hospital on 2/2/1990 at about 3 p.m. and he introduced himself to Shalan and also informed her that he had come to record her statement. The Medical Officer present had certified Shalan to be in fit condition to make the statement. On his inquiry, Shalan stated that she was of the age of 26 years and she was married to her maternal uncle's son, resident of the same village about 10 years back and her husband was a social worker. From the wedlock she begot two children and was staying in the matrimonial home with the in-laws, her husband and two children. For the last two years on some pretext or the other her husband was physically assaulting her and this was on account of an ongoing dispute between her husband and her father in regard to the agricultural land. Last night there was quarrel between her and her

husband and during that her husband physically assaulted her. As she could not bear the tortures, she committed suicide around 9 p.m. by powering kerosene on herself and by setting herself on fire. Her in-laws tried to rescue her and thereafter she was taken to the hospital. She reiterated that on account of the ongoing land dispute between her husband on one side and her father on the other side, she was being subjected to the physical and mental cruelty by her husband and on that count she set herself on fire.

4. Both the courts below, on perusal of this document at Exh.25 read with the testimony of P.Ws.9 and 10 have accepted that the dying declaration of the deceased which was made voluntarily and without any influence or coercion. P.W.10 stated before the trial court in his depositions that he was present all along when the dying declaration at Exh.25 was recorded by P.W.9 and Shalan was found to be fit to make such a statement. He further confirmed that P.W.9 had recorded the statement as told to him by Shalan and there was no relation or other member of the family present when P.W.9 recorded the dying declaration.

5. The defence had before both the courts below

challenged the veracity of the dying declaration at
Exh.25 on the ground that when Shalan was admitted,
P.W.10 was present and he had recorded the case
history as per which she had disclosed that she
sustained burn injuries on account of the incident,
namely, the bursting of kerosene stove while cooking.
P.W.10 in his depositions before the trial court had
reiterated the statement but both the courts below
have discarded the same solely on the ground that when
the case history was recorded by P.W.10, the accused
was present. In addition, both the courts below have
also taken into consideration the fact that P.W.4 and
P.W.5 the brother and sister-in-law of Shalan did not
support the case of the prosecution and may be on
account of the belief that the welfare of the two
children Shalan begot from the marriage would be
paramount. There is no evidence to show that the
accused was not present in the hospital when Shalan
was admitted and the case history was recorded by
P.W.10 in his presence. In fact, in his statement
recorded under Section 313 of Cr.P.C. this part of
his being present when P.W.10 recorded the case

history is not disputed. The Lower Appellate Court, while accepting the prosecution case solely based on Exh.25 and the evidence of P.W.9 and P.W.10 relied upon the law laid down in the case of Kamlesh Rani v. State of Haryana (1998 Cri. L.J. 1251), Khushalrao v. State of Bombay (AIR 1958 SC 22) as well as K.R. Reddy v. Public Prosecutor AIR 1976 SC 1994. A Constitution Bench of the Apex Court in the case of Laxman vs. State of Maharashtra [(2002) 6 SCC 710], in para 4, recorded the following observations on the juristic theory regarding the acceptability of a dying declaration:-

"4. Bearing in mind the aforesaid principle, let us now examine the two decisions of the Court which persuaded the Bench to make the reference to the Constitution Bench. In Paparambika Rosamma v. State of A.P. the dying declaration in question had been recorded by a Judicial Magistrate and the Magistrate had made a note that on the basis of answers elicited from the declarant to the questions put he was satisfied that the deceased is in a fit deposing state of mind to make a declaration. The doctor had appended a certificate to the effect that the patient was conscious while recording the statement, yet the Court came to the conclusion that it would not be safe to accept the dying declaration as true and genuine and was made when the injured was in a fit state of mind since the certificate of the doctor was only to the effect that the patient is conscious while recording the statement. Apart from the aforesaid conclusion in law the

Court had also found serious lacunae and ultimately did not accept the dying declaration recorded by the Magistrate. In the latter decision of this Court in *Koli Chunilal Savji v. State of Gujarat* it was held that the ultimate test is whether the dying declaration can be held to be a truthful one and voluntarily given. It was further held that before recording the declaration the officer concerned must find that the declarant was in fit condition to make the statement in question. The Court relied upon the earlier decision in *Ravi Chander v. State of Punjab* wherein it had been observed that for not examining by the doctor the dying declaration recorded by the Executive Magistrate and the dying declaration orally made need not be doubted. The Magistrate being a disinterested witness and a responsible officer and there being no circumstances or material to suspect that the Magistrate had any animus against the accused or was in any way interested for fabricating a dying declaration, question of doubt on the declaration, recorded by the Magistrate does not arise."

6. Keeping in mind the principles as enunciated in the decision referred to hereinabove, it is clear that both the courts below rightly relied upon the dying declaration at Exh.25 read with the evidence of P.W.9 and P.W.10 so as to uphold the case of the prosecution for an offence punishable under Section 498-A of I.P.C. against the accused.

7. It was contended by the learned counsel for

the accused that even if the dying declaration at Exh.25 is read as it is, there is nothing to show that the reason for Shalan setting herself on fire was not on account of willful conduct on the part of the accused as attributed to the quarrels between the husband and wife. He derived support on this point from the following three decisions of this court:-

- (a) Smt. Sarla Prabhakar Waghmare vs. State of Maharashtra [1990 Cri.L.J. 407].
- (b) Maulaali Yakub Jamadar and ors. vs. The State of Maharashtra [2001 ALL MR (Cri) 317].
- (c) Devidas s/o. Baburao Karpe vs. State of Maharashtra [2004 ALL MR (Crim) 3249].

. In Jamadar's case which has been strongly relied upon by the learned counsel for the accused, the conviction was based solely on the dying declaration in which it was stated by the wife that she had set herself on fire because her husband, mother-in-law and sister-in-law were always quarrelling with her. This court, therefore, held that,

- (a) the deceased had generally stated that her husband, her mother-in-law and sister-in-law have always been quarrelling with her and for

what reasons was not given by her,

(b) with particular reference to her husband, the deceased had stated that after the quarrel "they had" with her two days ago, "my husband did not talk with me". If the husband did not talk to her for two days could be a provocation to commit suicide, then it seems possible that the deceased could have been overwhelmed by her own emotions,

(c) it is possible that there were quarrels between the appellant and the deceased but there is nothing to show that the quarrels, which are a fairly common feature of married life, were of such a nature, or that the appellants acted in such a way and said or did such things, as was likely to drive the deceased to commit suicide.

In the case of Devidas Karpe (Supra), the observations made by the learned Single Judge in para 12 and reproduced as under would distinguish the instant

case:

12. With this, the only piece of evidence on behalf of the prosecution remains to be considered is the Dying Declaration Exh.31. The prosecution has examined PW-8 Executive Magistrate Mr. Balwant Panse. From this Dying Declaration Exh.31, it appears that it is recorded in question and answer form. The Dying Declaration referred to alleged incidence of beating by the accused to deceased Mangalabai at about 4/5 p.m. What is material in this case is that the deceased Mangalabai in her Dying Declaration states that on account of beating, she got annoyed and therefore, she poured kerosene oil on her person and set herself ablaze. Therefore, beating by husband at about 4/5 p.m. is not the cause for committing suicide by deceased

Mangalabai. Admittedly, according to her version, in the Dying Declaration, it is the state of anger of her mind or fit of anger, which drove her to commit suicide by getting poured kerosene oil on her person and setting herself on fire. In my view, this cannot be said to be either abetment, incitement or instigation by accused within the meaning of Section 306 of IPC. In my view, this cannot be said to be a case of cruelty, under explanation (a) i.e. driving the deceased Mangalabai to commit suicide for the harassment caused to her by the husband. Therefore, the evidence adduced by the prosecution falls too short for recording a conviction either under Section 498-A of IPC or Section 306 of IPC."

8. As noted earlier, Exh.25 did not attribute

Shalan setting herself on fire only to the quarrel she had stated to have been taken place between her and her husband i.e. accused. She had stated in her dying declaration that on account of the ongoing disputes in relation to the transfer of land by her husband in favour of her father there used to be quarrels and the accused used to beat her. In the night of the incident she stated that accused started quarrelling at about 9 p.m. and started beating her. She was tired of the mental and physical torture and, therefore, decided to end her life. These contents of the dying declaration at Exh.25 themselves distinguish the instant case from the case of Jamadar (Supra) as

well as Karpe (Supra) and, therefore, the decisions rendered in the said cases are of no assistance to the accused. Having regards to the clarifications provided by the Constitution Bench in Laxman's case (Supra) on the issue of juristic theory of acceptability of dying declaration, it has to be held that both the courts below were right in accepting Exh.25 as the dying declaration to be genuine and reliable so as to base the prosecution case on the same and supported by the testimony of P.W.9 and P.W.10. The evidence proves that Shalan set herself on fire due to the wilful conduct of the accused-petitioner.

9. It is also evident from the decision of the Lower Appellate Court that the learned Judge was conscious of the surrounding circumstances and he, therefore, held that there was a case to reduce the sentence from RI of two years to RI of one year. Hence, there is no case made out to disturb the order of conviction and sentence as passed by the Lower Appellate Court while allowing the petitioner's appeal partly.

10. Mr. Patil the learned counsel for the petitioner-accused finally submitted that the sentence of one year RI as awarded by the Lower Appellate Court in the impugned decision requires to be reconsidered and reduced. This has been opposed by the learned APP. Keeping in mind that an offence proved under Section 498-A of IPC against the petitioner is not only an offence against an individual but it reflects in a way, a social evil on. I agree with the learned APP that this is not a fit case to reduce the sentence any further.

11. Hence, this Criminal Revision Application fails and the same is hereby dismissed. Consequently, the bail granted to the petitioner-accused would stand cancelled.

12. Mr. Patil the learned counsel for the petitioner-accused submitted an oral application praying for time to surrender. The petitioner's bail is extended by four weeks from today and thereafter it shall stand cancelled.

(B.H. Marlapalle,J.)